



## **FINAL STATEMENT**

**of the German National Contact Point for the  
OECD Guidelines for Multinational Enterprises  
at the Federal Ministry for Economic Affairs and Energy**

**in response to a specific instance submitted by**

- SÜDWIND Institut (hereinafter referred to as “Südwind”), Bonn (Germany),
- Sedane Labour Resource Centre (Lembaga Informasi Perburuhan Sedane, hereinafter referred to as “LIPS”), Bogor (West Java, Indonesia),
- Stichting Schone Kleren / Clean Clothes Campaign (hereinafter referred to as “CCC”), Amsterdam (Netherlands)

(hereinafter collectively referred to as “the Complainants”)

**against**

- Adidas AG (hereinafter referred to as “Adidas”), Herzogenaurach (Germany)

(hereinafter referred to as “the Respondent”)

Hereinafter, the Complainants and the Respondent will be collectively referred to as “the Parties”.

**Table of Contents**

A. SUMMARY ..... 3

B. BACKGROUND AND SEQUENCE OF EVENTS DURING THE PROCEDURE..... 4

    I. Factual basis..... 4

        1. Respondent’s business relationships..... 5

        2. Underlying developments ..... 5

    II. Initial Assessment by the NCP ..... 7

        1. Points accepted for further examination ..... 7

            a) Wage issues..... 7

            b) Right to work and freedom of association ..... 8

            c) Due diligence..... 9

        2. Points not accepted for further examination..... 9

    III. Acceptance of the good offices by the Parties.....10

    IV. Mediation.....10

C. ASSESSMENT BY THE NCP .....13

    I. Reasons why no agreement on the entirety was reached in the procedure.....13

    II. Recommendations .....14

D. FOLLOW-UP MEASURES.....15

## A. SUMMARY

1. This specific instance procedure was brought before the German National Contact Point for the OECD Guidelines for Multinational Enterprises (hereinafter referred to as “NCP”) by the Complainants, three non-governmental organisations from Germany, the Netherlands, and Indonesia. It is directed against the Respondent, a multinational sportswear manufacturer headquartered in Germany.
2. The Complainants are of the opinion that the Respondent failed to fulfil its obligations under the OECD Guidelines for Multinational Enterprises (hereinafter referred to as “OECD Guidelines”) with regard to certain events that occurred in its supply chain. These events took place in Indonesia from January 2012 onwards at a factory that was acting as a subcontractor (hereinafter referred to as “Subcontractor”) to the Respondent’s main shoe manufacturing partner (hereinafter referred to as “Main Partner”) in that country. From the Complainants’ point of view, the Respondent did not adequately use its influence as a buyer with regard to alleged anti-union behaviour, layoffs, and wage matters at the Subcontractor’s factory, thereby violating provisions set out in Chapters II (General Policies) and IV (Human Rights) of the OECD Guidelines. The Respondent rejects these allegations pointing to, inter alia, the activities it undertook to help resolve the situation as well as the relatively small size of its order volume that limited its leverage vis-à-vis the Subcontractor.
3. In its Initial Assessment, the NCP came to the conclusion that certain aspects of the issues raised by the Complainants merited further examination. These issues relate to the time when the Respondent had a sourcing relationship with the Subcontractor – i.e. up until May 2012 – and concern Chapters II and IV of the OECD Guidelines, linked to concepts and principles contained in Chapter I of the Guidelines.
4. Following the Parties’ acceptance of the NCP’s offer of good offices the NCP arranged a series of meetings with the Parties and held numerous bilateral contacts to help resolve the Parties’ divergences relating to the issues of wages as well as freedom of association. While the issues raised relating to the wage issue were resolved during the conversations, no common understanding could be reached regarding the freedom of association aspects. Hence, the NCP decided to conclude the mediation and issue the present final statement including recommendations to the Parties.

5. This decision was taken in agreement with the federal ministries represented in the Interministerial Committee on the OECD Guidelines for Multinational Enterprises.<sup>1</sup>

## **B. BACKGROUND AND SEQUENCE OF EVENTS DURING THE PROCEDURE**

6. On 19 March 2018, the NCP based at the Federal Ministry for Economic Affairs and Energy received an e-mail with several annexes in which the Complainants formally lodged a complaint alleging that the Respondent had violated the OECD Guidelines.
7. The OECD Guidelines are part of the OECD Declaration on International Investment and Multinational Enterprises and set out recommendations for responsible corporate conduct by multinational enterprises. The governments of the OECD Member States and other participating countries have committed themselves to promote the application of the OECD Guidelines through their respective National Contact Points and to have them investigate potential violations of the OECD Guidelines by multinational enterprises that are based in one of the participating states or operating from the territory of one of these states.
8. Whenever the NCP accepts a complaint, it discusses the matters raised in connection with the OECD Guidelines with the Parties and offers its good offices so as to support the Parties in finding amicable solutions.

### **I. Factual basis**

9. Both Parties provided the NCP with their own accounts of the facts underlying this complaint. The Complainants did so in their communication submitted on 19 March 2018 and the Respondent in its reply dated 26 April 2018. In addition, the NCP sought supplementary clarification from the Parties in oral and written form both prior to as well as during the mediation phase.
10. It is on this basis that the NCP summarises its own understanding of the underlying facts. This summary focuses on the aspects which are pertinent to the present Final Statement and should not be construed as an exhaustive account of events.

---

<sup>1</sup> Federal Ministry of Finance, Federal Foreign Office, Federal Ministry of Justice and Consumer Protection, Federal Ministry of Labour and Social Affairs, Federal Ministry of Food and Agriculture, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and Federal Ministry for Economic Co-operation and Development.

## **1. Respondent's business relationships**

11. The Respondent held and holds to this day a longstanding contractual relationship with the Main Partner which is active in the Indonesian shoe manufacturing business. In the first months of the year 2012, when the developments underlying this complaint took their beginning, the Main Partner had the Subcontractor, an Indonesian company located in Tangerang (Java), produce shoes for the Respondent. The Parties disagree on whether the Subcontractor was a subsidiary of the Main Partner or a legally independent entity.
12. The Respondent's sourcing relationship with the Subcontractor in total lasted for 19 months. The Respondent asserts that throughout this time its order volume never exceeded 5 per cent of the Subcontractor's production capacity, while the majority of that capacity was taken up by the production of shoes for a Japanese competitor of the Respondent.
13. Prior to the developments described below in paragraphs 14 et seq., the Respondent's compliance team conducted audits at the Subcontractor's factory in November and December 2011. Subsequently, i.e. in January 2012, the said developments took their beginning. Although the Respondent was aware of the wage issue described below, the freedom of association issue also described below was at first not brought to its attention, neither by a trade union nor an individual worker through one of the various channels provided for that purpose by the Respondent. When the Respondent learned about the wage issue, it directed the Main Partner to no longer use the Subcontractor as an overflow facility in the process of producing shoes for the Respondent. In the NCP's perception this stop of production took effect in May 2012, and 18 months later the Subcontractor ceased its business activities altogether.

## **2. Underlying developments**

14. In January 2012 the local minimum wage for shoe production in the Indonesian province of Banten had been increased to 1,682,000 Indonesian Rupiah (IDR). Owing to financial difficulties, the Subcontractor applied for a suspension which was granted by the province's Governor in April 2012. In this waiver, the minimum wage to be paid by the Subcontractor was reduced to 1,381,000 IDR for a period of three months from January 2012 onwards.

15. In the meantime and following protests by workers, negotiations had been conducted between the Subcontractor, the factory union SPN and worker representatives concerning the minimum wage implementation. As a result, the Subcontractor paid minimum wages of 1,381,000 IDR for January 2012 and 1,529,150 IDR for February and March 2012 respectively. From April 2012 onwards the new official minimum wage of 1,682,000 IDR was paid.
16. Against the backdrop of the minimum wage issues at the Subcontractor's factory, several workers in February 2012 formed a new trade union. The Complainants state that one of the founding members was approached on 10, 15 and 23 February 2012 by persons related to the Main Partner and the Subcontractor who voiced their disapproval of the formation of a new trade union and offered that founding member promotion if she would refrain from establishing a new trade union and join the existing one (SPN). The Respondent contests this statement. The new trade union called SBGTS-GSBI was notified to the relevant authority on 24 February 2012. The authority registered the new trade union on 14 March 2012.
17. On 23 and 24 February 2012 and up until 3 March 2012, nine leading members of SBGTS-GSBI including the above mentioned founding member were made redundant by the Subcontractor. They were part of a larger group of 69 workers, the majority of whom were members of the newly founded trade union, including the nine leading members. The Subcontractor in essence based the redundancies on reasons referring to its business activities. In the case of the above mentioned founding member, the Industrial Court later confirmed the lawfulness of the layoff and her appeal against this decision was dismissed by the Indonesian Supreme Court. The Subcontractor as well as the Main Partner did not notify the Respondent of these layoffs as that downsizing fell below the agreed notification threshold of 10% of the workforce.
18. The Complainants state that in the aftermath of these layoffs protests and rallies against the layoffs took place in May 2012. The Respondent contests this statement.
19. By contrast, it is undisputed that in June 2012 workers at the Subcontractor's factory started protests regarding wage issues which subsequently led to a strike in July 2012. It is likewise undisputed that in the wake of this strike the Respondent actively engaged in the post-strike mediation process between the Subcontractor and its workers. These events, however, took place after the cessation of production for

the Respondent at the Subcontractor's factory in May 2012 and are hence not pertinent to this Final Statement (cf. para. 3 above and para. 33 et seq. below). Accordingly, the NCP does not report on them in further detail.

## **II. Initial Assessment by the NCP**

20. Following intensive exchanges with the Parties, the NCP conducted an Initial Assessment of the facts to determine whether the matters raised in the complaint would warrant further examination. In this Initial Assessment the NCP agreed with the federal ministries represented in the Interministerial Committee on the OECD Guidelines for Multinational Enterprises<sup>2</sup> that some of the points raised by the Complainants merited further examination (cf. 1. below) and that others had to be rejected (cf. 2. below).
21. The NCP concluded its Initial Assessment on 27 July 2018 and transmitted it to the Parties on the same day. It did so extending an offer to conduct mediation proceedings in which the NCP would discuss the matters accepted for further examination with the Parties and make mediation services available in order to help the Parties jointly resolve these matters. At the same time, the NCP underlined that if an agreement was to be mediated, mutual trust, goodwill and an open and constructive relationship between both sides must be built and maintained.
22. Furthermore, the NCP emphasized that the (partial) acceptance of the Complainants' submission must not be construed as confirmation that the Respondent did violate the OECD Guidelines. Instead, by its acceptance the NCP merely confirmed that certain issues raised by the Complainants related to the application of the OECD Guidelines (Chapters IV (Human Rights) and II (General Policies) as well as I (Concepts and Principles)) and warranted a more thorough discussion.

### **1. Points accepted for further examination**

23. The points accepted for further examination can be summarised as follows:

#### **a) Wage issues**

24. Pursuant to paragraph 3 of Chapter IV of the OECD Guidelines, multinational enterprises should

---

<sup>2</sup> Cf. footnote 1 on page 4 above.

“[s]eek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.”

25. In this respect, the NCP firstly identified the following human rights issue:

- Potential adverse human rights impacts with regard to just and favourable conditions of work which include – pursuant to Article 7 of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as “ICESCR”) – remuneration for all workers that ensure a decent living for themselves and their families in accordance with the provisions of the ICESCR.

26. As pointed out in no. 43 of the OECD’s Commentary on Human Rights regarding Chapter IV of the OECD Guidelines, paragraph 3 of the said chapter

“is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship. Meeting the expectation in paragraph 3 would entail an enterprise ... to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact.”

27. The NCP therefore concluded that it was a matter for discussion whether the Respondent in similar situations ought to exert more influence on the Main Partner and/or a subcontractor to ensure that the latter paid the local minimum wage.

#### **b) Right to work and freedom of association**

28. Another human rights issue identified by the NCP with regard to the events up until May 2012 was the following:

- Potential adverse human rights impacts with regard to the right to work (Article 6 of the ICESCR) as well as the freedom of association (Article 8 a-c of the ICESCR; ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise as well as ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively).

29. This pertained to the alleged hampering of preparations for and the founding of the new trade union SBGTS-GSBI and the dismissals at the beginning of the year 2012. Here, too, the NCP regarded it as a matter for discussion whether the Respondent in similar situations ought to exert more influence. The NCP acknowledged in this context that the Respondent’s role was that of a minority purchaser



responsible for no more than 5 per cent of the Subcontractor's production capacity (see para. 12 above).

### **c) Due diligence**

30. Whereas the issues identified in paragraphs 25 and 28 above concern the Respondent's role in the *context* of the Subcontractor's – and possibly the Main Partner's – conduct, paragraph 5 of Chapter IV of the OECD Guidelines concerns the Respondent's *own* actions, foreseeing that multinational enterprises should

“[c]arry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts”.

31. According to no. 45 of the OECD's Commentary on Human Rights regarding Chapter IV of the OECD Guidelines, this due diligence requirement entails that companies assess actual and potential human rights impacts in their value chains, act upon the findings, track responses as well as communicate how impacts are addressed. It stands in the context of the general provisions on risk-based due diligence laid down in paragraph 10 of Chapter II (General Policies) of the OECD-Guidelines. Accordingly, it ought to be noted that no. 14 of the OECD's Commentary regarding Chapter II of the OECD Guidelines likewise stipulates that due diligence concerns both actual and potential adverse impacts during an on-going business relationship.

32. The NCP therefore concluded that the Respondent's due diligence efforts up until May 2012 could serve as a useful starting point for further discussion, not least with a view to ensure the best possible application of the OECD Guidelines in similar situations that might arise in the future, given that due diligence is an on-going process and not a time-bound obligation.

### **2. Points not accepted for further examination**

33. By contrast, the NCP could not accept the complaint for further examination regarding developments which followed the termination of the Respondent's sourcing relationship with the Subcontractor.

34. Both paragraph A.12 of Chapter II and paragraph 3 of Chapter IV of the OECD Guidelines contain an obligation to seek to prevent or mitigate adverse impacts that are directly linked to the company's operations, products or services “by a business

relationship”. Since no direct *contractual* relationship is necessary, the *actual* production of sports shoes by the Subcontractor for the Respondent until May 2012 fulfilled that requirement. However, as indicated in paragraph 13 above, it is the NCP’s understanding that a stop of production for the Respondent at the Subcontractor’s factory took effect in May 2012. From that time onwards there was no longer a sourcing relationship between the Respondent and the Subcontractor. The mere fact that the Respondent continued its business relationship with the *Main Partner* beyond May 2012 is not sufficient for the assumption of a continued business relationship between the Respondent and the *Subcontractor* and a direct linkage between the Respondent’s products and adverse impacts caused post May 2012 by the Subcontractor. The same holds true for the fact that the Respondent remained involved in negotiations between the Subcontractor and workers following the strike in July 2012 as the Respondent’s involvement was limited to actions such as the facilitation of an appointment of an independent mediator.

### **III. Acceptance of the good offices by the Parties**

35. Both Parties accepted the offer of the NCP’s good offices under the terms outlined in paragraph 21 above. The Respondent did so on 23 August 2018, the Complainants on 31 August 2018.

### **IV. Mediation**

36. Following the Parties’ acceptance, it took several months before the first mediation meeting between the Parties could take place. This protraction was owed to various reasons among which were the following:

37. In their letter of acceptance and in subsequent exchanges with the NCP, the Complainants voiced their disapproval of the decision not to accept those parts of the complaint which concerned events post May 2012. The NCP therefore saw the need for further bilateral exchange with the Complainants. As part of this exchange the head and deputy head of the NCP travelled to Bonn for a personal meeting with representatives of the German Complainant Südwind that took place on 19 October 2018 and which led to the clarification of the issue.

38. In parallel to the complaint procedure pending before the German NCP, negotiations took place in Indonesia between officials of the Indonesian government, union representatives and the Main Partner regarding compensation for workers. These

negotiations led to an agreement in October 2018. Hence it became necessary to discuss with the Parties which implications the said agreement would have for the NCP procedure. After internal deliberations, the Complainants informed the NCP on 30 November 2018 that they still wished to proceed with the complaint procedure. In its reply dated 7 December 2018, the Respondent voiced concern that it remained unclear which goal the Complainants would pursue by continuing the NCP procedure in the wake of the agreement reached in Indonesia. Accordingly, the German NCP sought further clarification from the Complainants who stated that as the compensation agreement concerns the strike in July 2012 it did not touch the issues accepted for further examination by the NCP in the Initial Assessment.

39. In the meantime, the Complainants had asked the NCP to postpone a first preparatory meeting of all Parties that the NCP had suggested to hold on 14 February 2019. The meeting then took place on 14 March 2019 at the Federal Ministry for Economic Affairs and Energy in Berlin with representatives from both Parties, the NCP and the Interministerial Committee for the OECD Guidelines for Multinational Enterprises. In addition, further representatives of both Parties participated via a phone conference from Jakarta and Hong Kong. This meeting served to clarify the rules and principles underlying the mediation, to give both Parties the opportunity to express general views on the case and to collectively confirm the scope of the mediation based on the aspects accepted for further examination by the NCP in the Initial Assessment.
40. On this basis, both Parties consented to the NCP's suggestion to hold a substantial mediation meeting on 10 May 2019. In preparation of that meeting, the NCP held thorough bilateral exchanges with both Parties i.e. on the question if the Complainants could prepare concrete questions of interest to them in order to structure subsequent discussions. In that context, the Complainants explained that they had decided not to compile a list of specific questions of interest to them that could be distributed to all participants prior to the meeting as a starting point of the discussion. Instead, the Complainants formulated these questions orally in the 10 May 2019 meeting itself, covering a wide range of issues concerning events in 2012 as well as pertaining steps taken by the Respondent. These questions were answered by the Respondent's representatives amongst whom were responsible employees from Asia who had been involved in the events in Indonesia.

41. At the end of that meeting, the head of the NCP concluded in his capacity as mediator that while several aspects of the 2012 events and the Respondent's reaction to these events had been exhaustively explained and clarified during the meeting it had appeared that open issues remained on other aspects of these events and it was uncertain if a common understanding could be reached in this respect. However, in his view the discussion had been constructive and fruitful; both Parties appeared to be open to continue the dialogue. He therefore suggested that in a following mediation meeting the focus should move away from past events to a more future looking conversation exploring possible ways to prevent similar challenges in the future, thereby improving the application of the OECD Guidelines. He noted that no other proposals were made and concluded that there seemed to be a way forward that the NCP would now explore with the Parties.
42. Following the meeting on 10 May 2019, the NCP continued its bilateral exchanges with both Parties by e-mail and telephone in order to frame and prepare a possible follow-up meeting. After a first round of bilateral contacts it suggested that a future oriented discussion to improve the handling of similar situations be based on concrete proposals taking into account the grievances addressed to the Respondent by the Complainant and which should therefore most usefully be prepared by the latter.
43. Reacting to this suggestion the Complainants reiterated their openness to continue the dialogue and acknowledged that the previous exchanges on the wage issue had been most productive. However, they also underlined that in their view the information on past events provided by the Respondent during the mediation meeting was insufficient with respect to the Respondent's handling of the alleged freedom of association violations. They requested more information on how the Respondent had made its assessment of the situation, in particular a report on a possible investigation in the aftermath of the 2012 events.
44. In reaction to this request the Respondent explained in writing its approach to the issues raised and declared that a report was not available. It expressed the firm view that for a focused and constructive continuation of the future oriented dialogue a list of specific proposals as suggested by the NCP would be essential.
45. Accordingly, the NCP came to the conclusion that for the time being there was not yet a sufficient basis to hold the future-oriented mediation meeting it had tentatively

scheduled for 16 July 2019 and suspended the discussions until after the summer 2019.

46. In autumn 2019 the NCP entered again in extensive bilateral exchanges with the Parties on their intentions and next steps. However, as the Parties' positions had not changed the NCP concluded that there was no real prospect to reach an agreement between the Parties. Accordingly, it informed the Parties about its intention to terminate the mediation and proceed to the preparation of a final statement concluding the complaint.

### **C. ASSESSMENT BY THE NCP**

47. In the absence of an agreement on the entirety of the matters raised, the NCP issues this unilateral Final Statement.<sup>3</sup>

#### **I. Reasons why no agreement on the entirety was reached in the procedure**

48. The NCP welcomes the fact that the mediation was instrumental in clarifying a part of the issues raised. It notes the Parties' recognition that useful and exhaustive exchanges have taken place resulting in a mutually accepted understanding of the developments around the wage issue and related due diligence issues considered under the complaint and the Respondent's handling of these issues.

49. At the same time the NCP regrets that despite extensive efforts no common understanding could be reached on the other part of the complaint relating to the dismissals of union members and the efforts undertaken by the Respondent to ensure freedom of association at the production sites of the Subcontractor.

50. The non-acceptance for further examination of certain subjects which were of major importance for the Complainants in the Initial Assessment may have played a role in this outcome. Nevertheless, in this regard the NCP is of the strong view that, even without treating the post May 2012 workers' movements and the resulting mass dismissals, the mediation, through a forward looking approach, could have made a contribution to helping the Respondent and stakeholders handle similar events in a more efficient and effective way. At the same time, the NCP has noted a lack of goodwill and of an open and constructive relationship between the Parties

---

<sup>3</sup> Cf. footnote 1 on page 4 above.

who share a long standing controversial working relationship, including another specific instance before the German NCP a number of years ago.

51. Hence, a vital precondition for the successful mediation of an agreement as specified in the NCP's Initial Assessment was not fulfilled. The Parties' interaction in this complaint procedure was not characterised by the necessary degree of goodwill and an open and constructive relationship between both sides (cf. para. 21 above).

## **II. Recommendations**

52. Without prejudice to the failure of the Parties to reach a comprehensive agreement on the issues raised through mediation, the NCP believes that the instrument of recommendation could potentially help to avoiding freedom of association issues similar to those considered in this complaint from re-arising, thereby contributing to the better implementation of the OECD Guidelines in the future. The NCP therefore avails itself of the opportunity to give one recommendation each to the Respondent and the Complainants:

53. As laid out in paragraph 13 above, it was only with a delay of several months that the Respondent learned of the events which had taken place at the Subcontractor's factory since the beginning of 2012. The Respondent explained this delay by the fact that in spite of a multitude of channels provided for reporting, neither an individual worker nor a trade union had brought these events to the Respondent's attention.

54. The NCP therefore recommends to the Respondent to review its reporting and complaint channels and to discuss with relevant stakeholders (trade union representatives, workers, business partners)

- which impediments might exist that might make potential informants refrain from using these reporting and complaint channels and
- how the effectiveness of these reporting and complaint channels could possibly be improved.

55. As explained, during the final stages of the mediation focussing on the freedom of association issues, the NCP felt that a future oriented dialogue on improvements of the Respondent's relevant due diligence procedures would benefit from the Complainants' significant expertise and experience in this field. It continues to be con-

vinced that the Complainants could usefully contribute to the Respondent's recommended review of its due diligence procedures, e.g. by making concrete proposals how, in their view, the Respondent could enhance its reporting and complaint channels.

56. The NCP therefore recommends that the Complainants provide such contribution in writing to the NCP to be forwarded to the Respondent.

#### **D. FOLLOW-UP MEASURES**

57. The NCP requests the Complainants to report to the NCP within six months after receiving this Final Statement on activities developed in response to the above recommendation (cf. para 56).

58. Furthermore the NCP requests the Respondent to report to the NCP within one year after receiving this Final Statement, detailing the activities developed in response to the above recommendation (cf. para 54), including on the consideration of the recommended contribution by the Complainants.

59. Thereafter the NCP will provide a report on the Parties' follow-up measures.

Berlin, 24 April 2020

*signed Brauns*

---

For the National Contact Point

Detlev Brauns

Federal Ministry for Economic Affairs and Energy